IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3431 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LALAJI DOLAJI PRAJAPATI - Petitioner(s)

Versus

URBAN LAND TRIBUNAL&NEX-OFFICEADDI.CHIEF SECRETARY GOVT-GUJ & 2 - Respondent(s)

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Appearance :

MR ASHOK K PADIA for Petitioner(s) : 1,
MR SIRAJ GORI, AGP for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 28/12/2005

ORAL JUDGMENT

1.In the present petition, the petitioner one Lalaji Dolaji Prajapati has challenged the order dated 14.9.88 passed by the Deputy Collector and competent authority

under the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter to be referred to as “the said Act”) as confirmed by the judgment dated 31.7.1990 passed by the Urban Land Tribunal.

2. The petitioner was owner of certain vacant urban land. In terms of the provisions of section 6 of the said Act, he filed declaration form before the authorities. His form was processed and draft statement in terms of section 8(3) of the said Act was prepared. The petitioner raised objection to the same. However, the Deputy Collector and the Competent Authority by the impugned order dated 14.9.88 declared 1910.55 sq. meters of his holding as urban vacant land out of which he was permitted to retain one unit equivalent 1000 sq. meters of land and remaining area of 910.55 sq. meters of land was declared as excess vacant land. The petitioner appealed against the order passed by the Deputy Collector and competent authority. The Urban Land Tribunal, however, rejected his appeal.

3. In view of the Urban Land (Ceiling and Regulation) Repeal Act, 1999, th vital question that calls for consideration is whether on the crucial date i.e. when

the Repeal Act came into force the possession of the land in question was taken over by the Government or not. In this regard, the State Government had earlier filed an affidavit in reply dated 12th May 2005. In the said affidavit in reply, it was stated, inter alia, that after declaration of 910.55 sq. meters of land belonging to the petitioner as excess vacant land out of survey No.430, the Competent Authority issued a notification under section 10(3) of the said Act on 15.9.1990 which was published in the Government gazette on 10.1.91 and notice under section 10(5) of the said Act was issued on 8.2.91 calling upon the petitioner to hand over the possession of the excess vacant land failing which he was informed that action will be taken within 30 days by the Government. It is stated that such notice was served on 17.2.91. After service of notice under section 10(5) of the said Act, since the petitioner did not surrender the possession of the excess vacant land to the Government, the competent authority followed the procedure under section 10(6) of the said Act and took the possession of the land in question by drawing panchnama on 7.5.91. Signatures of two witnesses were obtained on the panchnama. It is thus stated that on the date when the Urban Land

(Ceiling & Regulation) Repeal Act, came into force, the possession was already taken over by the Government. It is stated that though this Court passed order dated 10.5.91 directing to maintain status quo, the possession was already taken over on 7.5.91 by the Government. Copies of the notices and the panchnama have been produced along with the affidavit in reply.

4. Since the learned advocate for the petitioner indicated that notices were not issued to the petitioner at his address declared before the authorities and the same was sought to be served on his advocate, learned AGP Shri Gori filed a further affidavit dated 26th December 2005. In this affidavit, it is stated that the petitioner had been issued notice at the address disclosed by him in the declaration filed by him under section 6(1) of the said Act, however, the same was returned unserved. The petitioner was, therefore, served notice on the address at “Lalji Dolaji, C/o.R.M.Shah & Co., “Madhuban” B/h. Town Hall, Nr. Railway Under-bridge, Ellisbridge, Ahmedabad. It is stated that said address was disclosed by the petitioner himself while raising his objection to the draft statement issued by the Deputy Collector under

section 8(3)of the said Act. It is stated that the petitioner was duly served with the communication and had in fact filed a revision application on 5.12.88 against the final statement issued by the competent authority under section 9 of the said Act.

5. The petitioner has filed rejoinder to the above mentioned affidavit and denied the averments made therein.

6. Besides taking into account the averments made on affidavit, I have also perused the original file which contains the original declaration form filed by the petitioner in which he disclosed his address as Outside Delhi Darwaja, Opp: Hathising Wadi, Ahmedabad. The petitioner was at one stage sent a notice at the said address. However, the same was returned with an endorsement “left”. The original file also contains objections raised by the petitioner to the draft statement prepared by the Competent Authority. In this communication, the petitioner indicated his address as that of care of his advocate. The file also contains the original notice under section 10(5) and its communication to the petitioner on the address of his advocate. Apparently, the same was duly received at

the said address. Interestingly, this communication was made on 8.2.91 and must have been received by the addressee shortly thereafter. On 18.4.91, the petitioner has written a letter to the Competent Authority stating that against the orders passed against him, he has preferred an appeal before the High Court. He, therefore, requested the Competent Authority not to proceed further with the matter since his proceedings before the High Court are pending. This communication was received by the Competent Authority in an envelop of his learned advocate Shri R.M.Shah having address at "Madhuban", B/h. Town Hall, Nr.Railway Under-bridge, Ellisbridge, Ahmedabad. It can thus be seen that though the petitioner had indicated his residential address in the form filled under section 6 of the said Act, letter written by the Competent Authority on the said address was returned unserved with an endorsement "left". The Competent Authority therefore, attempted to serve the petitioner on the address given by him as one being care of his advocate. This communication was received and apparently, the petitioner was prompted to communicate to the Competent Authority that due to pendency of his appeal before the High Court, further steps may not be

taken with respect to the land in question. It is thus clear that the competent authority had taken sufficient care to ensure that the notice under section 10(5) of the Act is served on the petitioner and that in fact, the petitioner had also sufficient notice thereof. In any case, full attempt was made firstly to serve the petitioner on the address declared by him in the form filled under section 6 of the said Act. When the said attempt failed, the petitioner was sought to be served with a notice at his subsequent address disclosed by him. This was not unserved and in fact was received on behalf of the addressee. Shortly, thereafter, the petitioner wrote a letter to the Competent Authority requesting the Competent Authority to stay its hands off in view of the pendency of the proceedings before the High Court. Quite apart from the inescapable conclusion that the petitioner had received the same and was prompted to write a letter on account of the communication received from the Competent Authority, the Competent Authority committed no error in proceeding further with the proceedings under sections 10(5) and 10(6) of the said Act treating that the petitioner was duly served with the notice. I see no breach of rule 5 of the Urban Land Ceiling Rules

contrary to what is contended by the learned advocate for the petitioners. As noted, apart from seeking to serve the petitioner directly at the address so disclosed by him in form filled under section 6, the authority also served the notice on the petitioner at the address so disclosed by him on record. It is, therefore, not possible to accept the contention of the learned advocate for the petitioner that service of notice to the advocate was not sufficient in the present case. Firstly, the letter was addressed at the residential address of the petitioner declared by him. When such attempt failed, second communication was addressed on the address also disclosed by the petitioner during the course of the proceedings. This letter was duly received on behalf of the addressee. I also have reason to believe that this communication prompted the petitioner to correspond with the competent authority. Otherwise, there was no occasion for him to write the letter dated 18.4.91. As noted, this letter was posted in the envelop of the advocate of the petitioner Shri R.M.Shah. The insistence of the learned advocate for the petitioner that the notice should have been affixed on the residence of the petitioner cannot be accepted in the present case.

There was more than sufficient compliance with the requirement of rule and the said contention therefore cannot be accepted. On all these grounds, I do not find that there is any breach on the part of the authorities in seeking to take possession of the land in question. The possession was taken over before this Court granted the order of status quo and before the Repeal Act was brought in force. The proceedings therefore do not abate.

7. I have perused the orders passed by the Deputy Collector and the Urban Land Tribunal. I find no illegality having been committed. No arguments were advanced to point out any jurisdictional error having been committed by the authorities below.

8. In the result, I find no reason to interfere with the impugned orders. The petition is therefore being devoid of merit is hereby rejected with no order as to costs. Rule is discharged.

(Akil Kureshi, J.)

(vjn)